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INDIGENOUS ISSUES

Report of the open-ended inter-sessional ad hoc working group on a permanent forum for indigenous people

(Geneva, 14-23 February 2000)

Chairman-Rapporteur: Mr. Petter Wille (Norway)

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Introduction

1. In its resolution 1999/52 of 27 April 1999, the Commission on Human Rights decided to re-establish the open-ended inter-sessional ad hoc working group established in accordance with resolution 1998/20 to meet for eight working days prior to the fifty-sixth session of the Commission, and requested the working group to submit, with a view to completing its task, one or more concrete proposals on the establishment of a permanent forum for consideration by the Commission at that session. This decision was endorsed by the Economic and Social Council in its decision 1999/242 of 27 July 1999.

2. The Commission invited the Chairperson-Rapporteur of the working group, Mr. Richard van Rijssen (Netherlands), to submit a working paper to the Member States and other participants in the ad hoc working group containing suggestions and possible alternatives on all aspects of this matter, based on the result of the debate at the last session of the working group and subsequent informal consultations, in preparation for the next session of the ad hoc working group. The report of the Chairperson-Rapporteur is contained in document E/CN.4/AC.47/2000/2. The Commission on Human Rights requested the ad hoc working group to take into account in its work any comments received from Governments, United Nations organizations and bodies, specialized agencies, organizations representing indigenous people and the Working Group on Indigenous Populations, as well as such ideas as the United Nations High Commissioner for Human Rights, in her role as Coordinator for the International Decade of the World's Indigenous People, may wish to present to the ad hoc working group.

I. ORGANIZATION OF THE SESSION

A. Opening and duration of the session

3. The working group held 18 plenary meetings during the period 14-23 February 2000. A total of 315 people attended these meetings, including representatives of 47 Governments, 3 specialized agencies and 59 indigenous and non-governmental organizations.

4. The second session of the working group was opened by the United Nations High Commissioner for Human Rights, who recalled that the General Assembly, in its resolution 50/157, had identified as one of the main objectives of the International Decade of the World's Indigenous People the establishment of a forum for indigenous people. (The High Commissioner said that she proposed to use the term "indigenous peoples" whenever possible.) She referred to the developments relating to the proposed permanent forum and expressed the belief that consensus was growing around the need to establish a permanent forum, as was the momentum to bring such a forum into existence in the near future. She noted that indigenous peoples were deeply committed to the creation of the forum and that the idea of a high-level forum which would include indigenous representatives as members was new and largely unprecedented within the United Nations system. She urged indigenous delegations to play a full part in the preparations for the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance to take place in South Africa in 2001.

B. Election of the Chairperson-Rapporteur

5. At its first meeting, the working group elected by acclamation Mr. Petter Wille (Norway) as its Chairperson-Rapporteur.

C. Participation

6. The following States members of the Commission on Human Rights were represented: Argentina, Bangladesh, Brazil, Canada, China, Chile, Colombia, Cuba, Ecuador, France, Germany, Guatemala, India, Indonesia, Japan, Mexico, Morocco, Nepal, Norway, Pakistan, Peru, Portugal, Russian Federation, Spain, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela.

7. The following States, non-members of the Commission, were represented by observers: Angola, Australia, Belarus, Belgium, Costa Rica, Denmark, Egypt, Estonia, Finland, Israel, Jordan, Kenya, Lithuania, Malaysia, Netherlands, New Zealand, Panama, Paraguay, South Africa, Sweden, Uruguay.

8. The following non-member States were represented by observers: Holy See and Switzerland.

9. The following United Nations bodies and specialized agencies were represented by observers: International Labour Office, United Nations Educational, Scientific and Cultural Organization, World Health Organization.

10. The following indigenous and non-governmental organizations in consultative status with the Economic and Social Council were represented by observers:

Indigenous organizations: Aboriginal and Torres Strait Islander Commission, American Indian Law Alliance, Asociación Kunas Unidos por Napguana, Grand Council of the Crees (Eeyou Istchee), Indian Council of South America, Indian Movement "Tupaj Amaru", International Indian Treaty Council, International Organization of Indigenous Resource Development, Inuit Circumpolar Conference, National Aboriginal and Torres Strait Islanders Legal Services Secretariat, Saami Council.

Non-governmental organizations: Academic Council on the United Nations System, Centre Europe Tiers Monde, Commission of the Churches on International Affairs of the World Council of Churches, International Council of Nurses, International Movement Against All Forms of Discrimination and Racism, International Peace Bureau, International Service for Human Rights, International Work Group for Indigenous Affairs, Pax Romana, Society for Threatened Peoples, South Asia Human Rights Documentation Centre.

11. The following organizations of indigenous people accredited in accordance with Commission on Human Rights resolution 1995/32 were represented by observers: Ainu Association of Hokkaido, Assembly of First Nations, Association of Indigenous Peoples of the North, Siberia and Far East, Association Nouvelle pour la culture et des arts populaires, Aukin Wallmapu Ngulam-Consejo de Todas las Tierras, Black Hills Teton Sioux Nation, Comisión

Juridica de los Puebios de Integración Tawantinsuyana, Comisión Juridica para el Autodesarrollo de los Pueblos Originarios Andinos, Confederación Regional de Comunidades Mapuche, Cordillera Peoples' Alliance, Federación de Ayllus del Sur-Oruro, Finno-Ugric Peoples' Consultative Committee, Indian Confederation of Indigenous and Tribal Peoples, International Alliance of Indigenous and Tribal Peoples of the Tropical Forests, Lumad Mindanaw Peoples Federation, Mejlis of Crimean Tatar people, Movimiento Revolucionario Tupaq Katari de Liberación, Na Koa Ikaika O Ka Lahui Hawaii, Nepal Indigenous Peoples' Development and Information Service Centre, Organization for Survival of the Illaikipiak Indigenous Maasai Group, Taller de Historia Oral Andina, Te Kawau Maro

D Documentation

12 The working group had before it the following documents

Provisional agenda (E/CN 4/AC 47/2000/1),

Working paper on the consultations held by the Chairperson-Rapporteur of the first meeting of the open-ended inter-sessional ad hoc working group on a permanent forum for indigenous people submitted pursuant to Commission on Human Rights resolution 1999/52 (E/CN 4/AC 47/2000/2),

Information received from non-governmental organizations (E/CN 4/AC 47/2000/3),

Recommendations of the indigenous caucus on the establishment of the permanent forum for indigenous peoples in the United Nations system (E/CN 4/AC 47/2000/CRP 1)*,

The establishment of a United Nations permanent forum the positions of indigenous peoples, compiled by topic (E/CN 4/AC 47/2000/CRP 2)*,

Proposal of the Government of Mexico for the establishment of a permanent forum for indigenous people (E/CN 4/AC 47/2000/CRP 3)*,

Recommendations of the International Conference on the United Nations permanent forum for indigenous peoples, Chiang Mai, Thailand, 28-31 January 2000 (E/CN 4/AC 47/2000/CRP 4)*,

Proposal of the Government of Spain (E/CN 4/AC 47/2000/CRP 5)*,

List of attendance (E/CN 4/AC 47/2000/Misc 1)

13 The following background documents were made available to the working group

Report of the open-ended inter-sessional ad hoc working group on a permanent forum for indigenous people in the United Nations system (E/CN 4/1999/83),

* These documents may be consulted in the Secretariat

Commission on Human Rights resolution 1999/52, entitled "A permanent forum for indigenous people in the United Nations system",

Report of the Secretary-General: Programme of Activities of the International Decade of the World's Indigenous People (A/54/487).

E. Adoption of the agenda

14. The working group adopted its agenda, as contained in document E/CN.4/AC.47/2000/1, at its first meeting, held on 14 February 2000.

F. Organization of work

15. At its 1st meeting, the Chairperson-Rapporteur said that the report of the previous year's session of the working group (E/CN.4/AC.47/1999/83) as well as the report of the previous Chairperson-Rapporteur containing proposals for the establishment of a permanent forum for indigenous people (E/CN.4/AC.47/2000/2) would serve as a basis for the work of the second session of the working group.

16. He recalled that the Commission on Human Rights, in resolution 1999/52, had requested the working group to submit, with a view to completing its task, one or more concrete proposals on the establishment of a permanent forum for consideration by the Commission at its fifty-sixth session.

17. On the proposal of the Chairperson-Rapporteur, the working group decided, in order to speed up the drafting process, to continue its work in a combination of formal and informal meetings. It was also decided to appoint a governmental representative and an indigenous representative as facilitators for the sub-items regarding the proposals for the possible establishment of a permanent forum for indigenous people, as follows:

(a) Mandate and terms of reference for the activities to be undertaken by the forum
Governmental facilitator: Mexico
Indigenous facilitators: Mr. Willie Littlechild and Mr. Juan Léon

(b) Membership
Governmental facilitator: New Zealand
Indigenous facilitator: Ms. Victoria Tauli-Corpuz

(c) Financial and secretariat implications
Governmental facilitator: Sweden
Indigenous facilitator: Ms. Mililani Trask

(d) The United Nations body to which the proposed forum would report
Governmental facilitator: Argentina
Indigenous facilitator: Mr. Marcial Arias

(e) Location of forum
Governmental facilitator: Japan
Indigenous facilitator: Ms. Victoria Tauli-Corpuz

(f) Name of forum
Governmental facilitator: Japan
Indigenous facilitators: Ms. Lucy Mulenkei and Mr. Willie Littlechild

(g) Other matters
Governmental facilitator: Japan
Indigenous facilitators: Ms. Lucy Mulenkei and Mr. Willie Littlechild

II. GENERAL DEBATE

18. A number of governmental and indigenous representatives made general statements in support of the establishment of a permanent forum for indigenous people within the United Nations.

19. The working group observed a minute of silence to honour the memory of Chief Ed Burnstick, who had made an important contribution to further the cause of his people.

20. On behalf of the indigenous caucus, recommendations were submitted to the working group to serve as a basis for its work. The recommendations related to: the establishment of the permanent forum for indigenous people; the mandate and membership of the core group; nominations for the core group; participation of observers in the open assembly; placement of the permanent forum in the United Nations system; voting; the name of the forum; the number of members; rules of procedure; terms of reference; financing and location of the permanent forum and its secretariat. These recommendations were made available as a conference room paper (E/CN.4/AC.47/2000/CRP.1).

21. Many governmental representatives expressed their full support for the establishment of a permanent forum for indigenous people and stated that they were determined to work in an open and constructive spirit. Many said they hoped it would be possible to reach an agreement so that the forum could be established before the end of the International Decade of the World's Indigenous People. The importance of reaching consensus on one single proposal to be presented before the fifty-sixth session of the Commission on Human Rights was highlighted. The proposals of the previous Chairperson-Rapporteur and the recommendations of the indigenous caucus on the establishment of a permanent forum were important bases for the work of the working group.

22. Some governmental representatives said that there was a need to proceed with circumspection so that the end result would be welcomed by all participants. The need was stressed for a careful examination of issues before taking a final decision with regard to the establishment of the proposed forum. Reference was made by these governmental representatives to the statement of the Asian Group at the previous session of the working group.

23 At the 14th meeting, held on 21 February 2000 the President of the Parliament of Panama, Mr. Enrique Garrido Arosemena, addressed the working group. He stated that he was the first indigenous person to occupy the position of President of Parliament. He believed that it was nececessary and urgent to establish such an important forum within the United Nations system in order to meet the needs of indigenous peoples. He hoped that the forum would have a broad mandate which would enable it to touch upon all indigenous issues. He expressed the support of his Government for the immediate creation of the permanent forum for indigenous peoples.

III. PROPOSALS FOR THE POSSIBLE ESTABLISHMENT OF A PERMANENT FORUM FOR INDIGENOUS PEOPLE

24 At the 9th meeting, held on 18 February 2000, a number of joint facilitators' papers were presented to the working group for consideration.

A. Mandate and terms of reference for the activities to be undertaken by the forum

25 The representative of Mexico introduced the joint facilitators' paper on the mandate and terms of reference for the activities to be undertaken by the forum. He stressed that the purpose of the paper was to help find a common denominator as a basis for agreement, however, in that process other more difficult points had arisen. The task of the facilitators was to look at both aspects. He was convinced that the paper would be a basis for a further constructive dialogue between Governments and indigenous representatives. The paper read as follows:

"To examine all the issues of Indigenous Peoples [inter alia] [concerning] [civil], [political], economic, social, cultural, education, human rights, health, environment, development, [treaties, agreements and other constructive arrangements], women, youth, children, [and other rights related to Indigenous Peoples].

"To [review] [analyse] and promote a coherent policy, guidelines and a better coordination of the plans, programmes, instruments and activities related to Indigenous Peoples in the United Nations system.

"As an advisory body to provide technical support services on the issues of Indigenous Peoples for members of the United Nations and, on request, United Nations bodies, programmes, specialized agencies and Indigenous Peoples. It will provide advisory support to Governments that request it, especially for the elaboration of programmes and projects related to Indigenous Peoples.

"To conduct studies and research, and issue reports on all those things related to its mandate, if required it will convene independent experts and establish ad hoc working groups in specialized fields of study.

"To make recommendations to the Economic and Social Council on indigenous issues.

"To recommend to the Economic and Social Council to [consider] convene[ing] international conferences, [and] to prepare draft standards [and to create working groups] on the issues of Indigenous Peoples.

"To consult with Indigenous People's organizations, Governments and non-governmental organizations concerned with matters falling within its competence.

"To disseminate information on the concerns and needs of Indigenous Peoples, and on the approach of the United Nations system to Indigenous Peoples.

"To promote the rationalization, adaptation, strengthening and streamlining of the activities of the United Nations system in the field of Indigenous Peoples.

"Issues that deserve to be discussed and debated

"1. The indigenous caucus wishes the following paragraphs to be incorporated:

- As the mandate for the permanent forum is one of the most important aspects of the establishment of a permanent forum for Indigenous Peoples, and as this unique body will be within the United Nations system, it is recommended that the mandate be modeled on Articles 62 and 63 of the Charter of the United Nations.

  The permanent forum will have a broad mandate, inter alia:

  To promote peace and prosperity in accordance with the Charter of the United Nations, by developing friendly relations among nations and peoples based on respect for the principle of equal rights.[1]

  To make recommendations to the Economic and Social Council, General Assembly, other United Nations bodies and specialized agencies on urgent problems requiring immediate attention with regard to Indigenous Peoples and to develop proposals to give effect to such recommendations.[2]

"2. The governmental co-facilitator informed the indigenous co-facilitator that there are delegations that prefer the term indigenous 'issues' rather than Indigenous 'Peoples' in the text of the mandate. The indigenous co-facilitator equally informed the governmental co-facilitator that they prefer the term Indigenous 'Peoples' rather than indigenous 'issues' noting the opening statement of the High Commissioner for Human Rights.

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[1] "Declaration on the Rights of Peoples to Peace".

[2] "'Urgent problems'" used in respect of the establishment of the Sub-Commission for the Promotion and Protection of Human Rights.

"Final recommendations

"Explore the possibility of including the reference to Articles 62 and 63 of the Charter in the Preamble;

"Explore the possibility of introducing a reference to peace and prosperity and friendly relations among nations and peoples in the preamble."

B. Membership/participation

26. The representative of the indigenous caucus, Ms. Victoria Tauli-Corpuz, introduced the joint facilitators' paper on membership and participation. She emphasized that the role of the facilitators was to provide raw material for further consideration by the Chair. The paper read as follows:

"1. Membership of the permanent forum

"(a) The permanent forum should consist of an equal number of indigenous and governmental members;

"(b) The membership of the permanent forum should reflect the geographical distribution of indigenous people throughout the world in an equitable manner;

"(c) The permanent forum should comprise experts serving in a personal capacity;

Note: other options have been formally tabled by Spain (E/CN.4/AC.47/2000/CRP.5) and Mexico (E/CN.4/AC.47/2000/CRP.3), as appended.

"(d) The number of members of the permanent forum should be between 18 and 30.

"2. Participation of observers

"(a) All indigenous representatives/organizations should be able to participate as observers in meetings of the permanent forum, in accordance with established rules of procedure of the Economic and Social Council;

"(b) States, specialized agencies and non-indigenous NGOs with consultative status can participate in meetings of the permanent forum as observers.

"3. Selection of members of the permanent forum

"(a) Government and indigenous members of the permanent forum should be selected in accordance with their respective criteria and procedures;

"Option 1:

"(b) Indigenous and government members should be appointed by the Chair of the parent body, upon consultation with Governments and indigenous peoples' organizations and representatives respectively.

"Option 2:

"(b) Government members of the permanent forum should be elected by Member States.

"4. Term

"Members of the permanent forum shall serve for three years, with the possibility of serving for another term.

"5. Rules of procedure (relating to membership and participation)

"(a) The permanent forum should, to the greatest extent possible, operate on the basis of consensus;

"(b) The permanent forum may also take decisions by voting, by:

"Option 1:

"A two-thirds majority;

"Option 2:

"A majority of both the government and indigenous members;

"(c) The permanent forum can develop its own rules of procedures to establish its relationship with indigenous organizations, in accordance with the rules of procedure of the Economic and Social Council.

"Issues requiring further consideration:

"(a) Proposal by Spain;

"(b) Proposal by Mexico;

"(c) Modalities for selection of indigenous members of the permanent forum

(The indigenous caucus is currently discussing the manner of selection of indigenous members and the number of geographical regions. Once this is agreed, the number of members (1 (d)) of the permanent forum will be able to be more precisely determined. This should address issues of legitimacy and representativeness)."

C. Financial and secretariat implications

27. The representative of the indigenous caucus, Ms. Mililani Trask, introduced the joint facilitators' paper on financial and secretariat implications. She said that the facilitators had identified general categories that needed further clarification. The paper reads as follows:

"The following criteria should be taken into account:

"(a) The mandate of the body:

- Forums for discussion;
- Recommendations on issues for system-wide policy and coordination;
- Advisory services/technical cooperation/projects/programmes;
- Standard-setting;
- Possibility of retaining consultants;

"(b) The membership:

- Number of members 20-30;
- The nature of the members: experts/advisers;
- Travel costs;

"(c) The Secretariat:

- Establishment of a separate secretariat unit/section;
- Absorption capacity by United Nations Secretariat;
- Drawing on the Office of the High Commissioner for Human Rights;
- Drawing on other parts of the United Nations Secretariat e.g. the Department of Econoimic and Social Affairs;

"(d) The location of the permanent forum:

- New York;
- Geneva;
- Alternate meetings between New York and Geneva;

"(e) Holding of meetings:

- Annually, biannually at Headquarters;
- Possibility of holding regional meetings;
- Inter-sessional meetings of the bureau;

"(f) The length of meetings:

- 1 or 2 weeks;

"(g) Conference services:

- Documentation;
- Translation/interpretation;
- Summary records/verbatim (rule 38 of the rules of procedure of the Economic and Social Council);

"(h) Sources of finance:

- United Nations regular budget;
- Voluntary contributions;
- A mix of regular budget and voluntary contributions;
- Possibility of contributions from United Nations agencies and funds and programmes;

"(i) Other considerations:

- Tentative estimates of costs of the different locations have been requested from the secretariat;
- Should the Commission on Human Rights endorse the recommendations of the working group on a permanent forum, a statement of the programme budget implications (PBI) should be submitted to the Economic and Social Council (rule 31.3 of the rules of procedure). The decision of the Economic and Social Council, along with its financial implications, is then forwarded for final decision to the General Assembly;
- Some delegations stated that additional resources should be given to OHCHR if it were to service the permanent forum;

- Some delegations said that the costs of the permanent forum should be absorbed - within existing resources - by OHCHR and/or the United Nations regular budget;

- Some delegations said that documentation costs at this stage were covered by voluntary contributions;

- Some delegations wished to see a review of the existing voluntary funds for the Decade and travel costs."

28. At the 16th meeting, held on 22 February 2000, Mr. Giuliano Comba, representative of the Administration Section of the Office of the High Commissioner for Human Rights, made a statement on the financial implications of the establishment of the permanent forum. He provided further clarifications on the budgetary implications of different aspects of the forum in response to questions raised by the participants.

29. He said that the information regarding the financial implications of the forum was based on the request made by the Chairperson-Rapporteur, namely a forum meeting in Geneva for two weeks using all official languages, requiring 100 pages of pre-sessional documentation and 50 pages of post-sessional documentation, with a membership of 18 persons. He also had taken into account that there might be a need for some strengthening of the secretariat to assist with the preparations and servicing of the forum as well as incidentals. On this basis, the administration was able to make an approximate estimate of US$ 470,000 which, if the legislative bodies approved the establishment of the forum, would be absorbed by the regular budget. A detailed PBI would be prepared when and if a draft resolution on the forum was submitted to the Commission on Human Rights.

30. A number of participants requested further information about the possible costs of the forum, in answer to which the representative of the administration provided the following additional information: the average cost of the travel and daily subsistence allowance (DSA) of a single member of the forum for a period of two weeks would be US$ 7,300; the conference service costs for the two weeks was estimated at about $254,000; the cost of servicing the forum meeting in New York would be marginally higher than in Geneva as the DSA was higher; a separate secretariat with a staff of five persons would cost about $1.5 million; if the forum met for only one week the conference costs would be approximately $157,000; the costs of DSA for the five members of the Working Group on Indigenous Populations for the present biennium was $19,200. The representative added that the information provided was indicative only but that, since costs were standard across the United Nations, he hoped the figures would provide some guidance.

31. In the light of the information provided, notably that the cost of the permanent forum would be approximately $1.5 million, indigenous representatives stated that a separate secretariat for the permanent forum should be established.

32. Some Governments said that there was a relationship between the financial implications and the establishment of the permanent forum, while other governmental representatives expressed the view that financial criteria should not be the only deciding factor in the creation of the forum.

33. Several Governments and indigenous representatives stated that financial constraints should not be placed above other, substantive issues regarding the establishment of the permanent forum.

34. Certain governmental representatives said that funding for the permanent forum could be secured by abolishing the Working Group on Indigenous Populations.

D. The United Nations body to which the proposed forum would report

35. On behalf of the facilitators, the representative of Argentina stated that the permanent forum should be a subsidiary body of the Economic and Social Council.

E. Location and name of forum

36. The representative of Japan introduced the joint facilitators' paper on the location and name of the forum. He said that there was no consensus on whether the forum should be located in Geneva or New York. Concerning the name of the forum, the facilitators' paper reads as follows:

> "For the time being the co-facilitators want to introduce two options: 'Permanent Forum for Indigenous Peoples' and 'Permanent Forum on Indigenous Issues'.
>
> "All the indigenous representatives have a strong preference for the inclusion of 'indigenous peoples'.
>
> "There is still no consensus among the Governments on the name of the permanent forum."

F. Other matters

37. The representative of Denmark suggested that it might be useful to include a review clause in the final proposal, allowing for the functioning of the forum to be reviewed in the light of experience.

G. Elements of a permanent forum

38. At its 18th meeting, the Chairperson-Rapporteur, in accordance with the working group's mandate, presented a paper for submission to the Commission on Human Rights containing elements of a permanent forum. The paper was a reflection of various proposals that had been presented. These elements are as follows:

"There is broad support for the working group to recommend that a Forum on Indigenous Issues be established as a subsidiary body of the Economic and Social Council.

"Another proposal is that the title should be 'The Permanent Forum for Indigenous Peoples'.

"Furthermore, there is broad support for the proposal that the Forum should consist of the elements set out below. Where indicated, some of these elements require further clarification and consideration.

"**1. Mandate**

"The Forum shall be an advisory body with the members serving in their personal, independent capacity with the mandate to discuss indigenous issues within the mandate of the Economic and Social Council and the themes of the International Decade.

"It was also proposed that specific reference should be made in the mandate to Articles 62 and 63 of the Charter of the United Nations.

"In fulfilling its mandate, the Forum will:

"(a) Provide expert advice and recommendations on indigenous issues to the parent body, as well as to programmes and agencies within the United Nations through the Economic and Social Council;

"(b) Promote coordination within the United Nations system of activities relating to indigenous issues;

"(c) Prepare and disseminate information on indigenous issues.

"**2. Membership**

"There is agreement that the membership of the Forum should reflect equitable geographical distribution and give due respect to gender balance.

"However, there are different views on the number of members of the Forum. One proposal is that the Forum shall consist of 18 members. There is a proposal from the indigenous caucus that the Forum shall consist of approximately 30 members which is based on their model of geographical distribution.

"There is support for the proposal that members should be equally divided between Governments and indigenous representatives.

"3. Selection of members

"The experts nominated by Governments shall be elected by the Economic and Social Council.

"One proposal is that the indigenous experts shall be appointed by the Chairperson of the Economic and Social Council following consultations with indigenous organizations and representatives.

"Another proposal is that the nomination of indigenous experts should be confirmed by the Chairperson of the Economic and Social Council, based on consultations which take into account the indigenous processes in the different regions.

"It was also emphasized that the selection of indigenous members, by whatever method, should take into account the principles of broad consultation, representativity, transparency, and equal opportunities for each community.

"The indigenous caucus has proposed the following:

'Criteria/profile for indigenous members of the Forum

'(a) The person must be an indigenous person from his or her region, preferably living on the territories of their own indigenous culture. Exceptions to this would be made for persons who are living in exile, displaced or stateless;

'(b) The person must have experience in indigenous issues of his or her region;

'(c) Experience in international indigenous forums, including, inter alia, the Working Group on Indigenous Populations, the inter-sessional working group on the draft declaration on the rights of indigenous people and the working group on the permanent forum.

'It is encouraged that the indigenous peoples within each region identify further criteria designed to preserve and promote indigenous cultures in order to strengthen and recover the things identifying us as indigenous and so that the indigenous contribution to the United Nations system would be maximized.

'Process of selection of indigenous members to the Forum

'The indigenous peoples of each region shall be free to create procedures to designate their regional representatives to the Permanent Forum.'

"The appointment/election of experts shall be for a period of three years, with the possibility of reappointment for one further period.

"4. Participation of observers

"All indigenous representatives/organizations should be able to participate as observers in the meetings of the Forum.

"Participation of indigenous organizations not in consultative status with the Economic and Social Council should be in accordance with the procedures established for the Working Group on Indigenous Populations, until such time as the Forum establishes its own procedures for participation, with the approval of the Economic and Social Council.

"Another option is that the Economic and Social Council establish the rules of procedure, which should take into account the unique nature of this body.

"States Members of the United Nations, observer States, United Nations bodies and specialized agencies, and non-indigenous non-governmental organizations with consultative status can participate in the meetings of the Forum as observers.

"The Forum can invite experts to participate in its meetings.

"5. Meetings

"The Forum shall hold an annual session of 10 working days and should prepare a report to the Economic and Social Council for dissemination to Governments, United Nations bodies, specialized agencies and indigenous and non-governmental organizations. One proposal is that there should be a possibility for inter-sessional activities.

"The Forum shall normally meet at United Nations Headquarters or at the United Nations Office at Geneva.

"6. Secretariat

"The Secretary-General of the United Nations shall provide the necessary staff, including indigenous expertise, and facilities for the effective performance of the functions of the Forum.

"The Forum shall be financed within the resources of the regular budget of the United Nations, including available contributions from existing United Nations agencies and funds and programmes.

"Voluntary contributions could be sought to assist the activities of the Forum.

"7. Rules of procedure/decision-making

"One proposal is that the Forum shall adopt its own rules of procedure which should be approved by its parent body, the Economic and Social Council.

"Another proposal is that the rules of procedure should be adopted by the Economic and Social Council.

"The rules of procedure of the Economic and Social Council should apply until the Forum has established its own rules of procedure.

"**8. Review clause**

"Five years after its establishment, there shall be a review of the functioning of the Forum in light of the experiences gained.

"**Alternative proposals for elements of a permanent forum**

"Another proposal, as set out in this report, is that the Forum should be established as a subsidiary body of the Economic and Social Council with a State-based formula of mixed composition, governmental and indigenous, on the basis of equitable regional distribution. Thus, each Member State having indigenous populations on its territory should accredit two delegates, one representing the Government and the other designated by the indigenous populations themselves.

"It has also been proposed that the Forum should be established as a subsidiary body of the Economic and Social Council as one of its functional commissions."

39. Following the presentation of the elements of a permanent forum by the Chairperson-Rapporteur, comments were made by the participants in the working group.

40. Many participants said that the Chairperson-Rapporteur had presented a very valuable paper, which had usefully identified some important elements of convergence. Broad support had been expressed by many governmental and indigenous participants for the establishment of a permanent forum.

41. Some Governments expressed disappointment that the working group had not been able to come up with one single proposal. However, it was a broadly held view that the paper reflected a balance between the various positions expressed during the session of the working group and would be a good basis for the Commission on Human Rights to take a decision.

42. Indigenous representatives proposed that the name of the forum be "Permanent Forum for Indigenous Peoples". Some Governments agreed with this proposal while others preferred the term "Indigenous Issues".

43. On the question of the mandate, there was discussion about whether to list particular issues or to keep a broad mandate. Indigenous participants in particular suggested that the forum be modelled on Articles 62 and 63 of the Charter of the United Nations.

44. There followed a discussion on membership and selection procedures. Indigenous representatives referred to a distribution of indigenous membership based on their own criteria. This list is contained in the annex to the present report.

45. Many participants suggested that the real distribution of indigenous communities in the world should be taken into account in deciding on the membership.

46. On the issue of the selection of indigenous representatives some governmental delegations expressed disappointment that no concrete proposals had been made in this regard

and that the proposals made by the indigenous representatives were imprecise. Some States expressed their reservations with regard to the distribution of indigenous membership of the forum as proposed by the indigenous representatives and said that some elements of that proposal would set a dangerous precedent in the United Nations system. The importance of the criteria of legitimacy and representativeness was stressed.

47. Some States referred to the need for further clarification about the process of selecting indigenous representatives to the forum and thought that the principles of broad consultation, representativity, transparency and equal opportunities for each community should be borne in mind.

48. Some participants felt that the Economic and Social Council should establish the rules of procedure for the forum. Others felt that the forum should establish its own rules of procedure and should submit these to the Council for approval.

49. The Chairperson-Rapporteur thanked the participants for their comments, and assured them that the elements would be included in the report with only technical changes, on the understanding that they did not yet represent a consensus view.

IV. PARTICIPATION OF INDIGENOUS PEOPLE IN THE WORK OF THE UNITED NATIONS SYSTEM, INCLUDING THE ROLE AND FUNCTION OF THE WORKING GROUP ON INDIGENOUS POPULATIONS AND FOLLOW-UP

50. At the 16th meeting, held on 22 February 2000, a general discussion on the above-mentioned topics was held. The Chairperson-Rapporteur said that he did not want a long discussion on these items as the future role of the Working Group on Indigenous Populations was not part of the mandate of the meeting and any follow-up would depend upon the results of the discussions on the permanent forum.

51. Some Governments and all indigenous representatives concurred that it was not within the mandate of the working group to take a decision on the future of the Working Group on Indigenous Populations.

52. Other Governments stated that the linkage between the permanent forum and the Working Group on Indigenous Populations needed to be considered. Concern was expressed about possible duplication of mandates and activities.

53. Several Governments said that the Working Group on Indigenous Populations had played a valuable role over the years in providing a forum for dialogue and exchange of views and information on issues of importance for indigenous representatives. However, it was considered that the permanent forum, when established, would provide a focal point for review of, and dialogue on, indigenous issues and that the Working Group would not be needed.

54. In this respect, one Government said that the standard-setting activities within the mandate of the Working Group on Indigenous Populations had been completed in 1994 with the

completion of the draft declaration. It was said that the other part of the mandate of the Working Group, the review of developments, should be merged with the permanent forum.

55. Other governmental and many indigenous representatives said that the standard-setting activities of the Working Group on Indigenous Populations had not yet been finalized and that many issues remained under discussion, such as land, heritage and intellectual property. It was emphasized that it was important to have an appropriate transition from the Working Group to the permanent forum. It was essential that mandates not be lost.

56. Many indigenous representatives stated that the establishment of the permanent forum should not result in the abolition of the Working Group on Indigenous Populations.

57. Some participants said that the mandates of the permanent forum and the Working Group on Indigenous Populations were very different. It was emphasized that the two bodies could and should co-exist, even for only the first five years of the existence of the permanent forum. One governmental representative referred to the proposal to have a review clause for the permanent forum and suggested suspending the sessions of the Working Group on Indigenous Populations until the first review of the permanent forum.

58. At its 19th meeting, held on 24 March 2000, the working group adopted its report.

Annex

PROPOSAL OF THE INDIGENOUS CAUCUS: GEOGRAPHICAL DIVISIONS AND NUMBER OF INDIGENOUS MEMBERS OF THE PERMANENT FORUM

North America	2
Central America	2
South America	2
North Africa	1
Western and Central Africa	1
Eastern and Southern Africa	1
Western Europe	1
Russian Federation - Commonwealth of Independent States (former USSR)	2
Pacific	2
South Asia (South Asian Association for Regional Cooperation - SAARC)	1
South-East Asia (Association of South-East Asian Nations - ASEAN)	1
East Asia	1
Total regional representatives	17

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Item 16 of the provisional agenda

REPORT OF THE SUB-COMMISSION ON THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

Report of Mr. Ribot Hatano, Chairperson of the Sub-Commission at its fifty-first session, submitted in accordance with Commission resolution 1999/81

Introduction

1. In its decision 1999/256 of 27 July 1999, the Economic and Social Council endorsed the recommendation contained in the statement agreed on by consensus by the Commission on Human Rights at its fifty-fifth session, made by the Chairperson of the Commission on 29 April 1999, that the title of the Sub-Commission on Prevention of Discrimination and Protection of Minorities be changed to Sub-Commission on the Promotion and Protection of Human Rights. In its resolution 1999/81 of 28 April 1999, entitled "Work of the Sub-Commission on Prevention of Discrimination and Protection of Minorities", the Commission on Human Rights welcomed the further steps taken by the Sub-Commission to reform and improve its methods of work, including by the adoption of a restructured agenda at its fiftieth session and, in particular by making efforts to implement Sub-Commission decision 1996/114 to achieve a compilation of the existing rules of procedure and procedural questions to be resolved, by deciding to limit the initiation of new studies (decision 1996/113), by adopting criteria for new studies (decision 1997/112), by deciding to establish during its fifty-first session a sessional working group on the methods of work of the Sub-Commission (1998/108), and by enhancing its cooperation with all relevant bodies.

2. In the same resolution, the Commission requested the Sub-Commission to continue its efforts to avoid duplication with the work of the Commission and to further improve on its methods of work by:

(a) Focusing on its primary role as an advisory body of the Commission on Human Rights;

(b) Giving particular attention to the selection of studies, focusing its attention on how and where the implementation of existing standards could be improved;

(c) Respecting strictly the principles of independence, impartiality and expertise;

(d) In view of the budgetary situation of the Office of the United Nations High Commissioner for Human Rights, doing its utmost to limit requests for the creation of new working groups;

(e) Facilitating efficient and effective participation of non-governmental organizations;

(f) Considering fully studies and working papers by special rapporteurs and its members before sending them to the Commission;

(g) Focusing strictly on questions relating to human rights in accordance with its mandates.

3. The Commission requested the Chairperson of the fifty-first session of the Sub-Commission to report to the Commission at its fifty-sixth session on the results of the consideration of the methods of work of the Sub-Commission.

4. In accordance with that request, the Chairperson of the Sub-Commission submits the present concise report to the Commission. More details regarding the various aspects of the work of the fifty-first session of the Sub-Commission will, if necessary, be provided by the Chairperson of the Sub-Commission in his statement to the Commission at its fifty-sixth session. The report of the Sub-Commission on its fifty-first session is before the Commission in document E/CN.4/2000/2-E/CN.4/Sub.2/1999/54.

I. METHODS OF WORK OF THE SUB-COMMISSION

5. In response to the Commission's requests that the Sub-Commission enhance its efforts to improve on its methods of work, and that it devote sufficient time at its fifty-first session to discussion of its methods of work, the Sub-Commission established a sessional working group to consider its methods of work (decision 1999/102). The task of the working group was to consider and complete the examination of the final working paper on methods of work of the Sub-Commission submitted by Mr. Ribot Hatano, pursuant to Sub-Commission decision 1998/108 (E/CN.4/Sub.2/1999/2).

6. On the issue of the nature of the exercise undertaken with respect to document E/CN.4/Sub.2/1999/2 and the follow-up to be given to it, some participants in the sessional working group were of the opinion that the compilation of rules, as revised in the course of the discussion, should remain a document intended for the internal use of the Sub-Commission only. They also considered that no approval or endorsement of that document should be sought from the Commission on Human Rights and the Economic and Social Council. Reference was made in this connection to rule 24 of the rules of procedure of the functional commissions of the Economic and Social Council, which expressly provides that those rules should apply to the proceedings of subsidiary bodies "insofar as they are applicable". It was stated that the exercise by the working group was undertaken precisely, in line with rule 24, in order to apply, mutatis mutandis, the rules of the Economic and Social Council. Other participants, however, were of the view that the document should be submitted to the Commission and, eventually, to the Council, for information and possible comments or reaction. One participant was of the view that it would be wise to seek an opinion of the Legal Counsel.

7. In its decision 1999/114, the Sub-Commission decided to transmit to the Commission on Human Rights for its information the "Guidelines for the application by the Sub-Commission on the Promotion and Protection of Human Rights of the rules of procedure of the functional commissions of the Economic and Social Council and other decisions and practices relating thereto", resulting from the work of the sessional working group and contained in the latter's report (E/CN.4/Sub.2/1999/22).

II. RATIONALIZATION OF THE WORK OF THE COMMISSION AND THE SUB-COMMISSION

8. One of the constant concerns of the Sub-Commission in recent years has been to ensure a better review of its mechanisms aimed at enhancing its effectiveness. In this context, and in response to the recommendations made by the Bureau of the fifty-fourth session (1998) of the Commission on Human Rights regarding the rationalization of the work of the Commission and the Sub-Commission (E/CN.4/1999/104, paras. 55-56), the Sub-Commission at its fifty-first session held seven meetings devoted to that subject, during which it had a thorough discussion of its future tasks, length of sessions, methods of work, composition and the election of its members. The conclusions reached unanimously by the Sub-Commission on the above issues are contained in document E/CN.4/Sub.2/1999/47. Some of the conclusions are highlighted below:

9. With regard to its substantive tasks, the Sub-Commission reaffirmed its primary function as a "think-tank" of the Commission and considered that its main task in the future would be to assist in finding ways to ensure the full enjoyment of the established human rights. In this respect, the Sub-Commission was of the view that the major issues to be addressed by the Sub-Commission should be the following:

(a) The administration of justice (arbitrary detention, impunity, derogation, emergency, independence of judges, etc.), especially with regard to implementation of standards in this field;

(b) The establishment of a social forum to facilitate more comprehensive and effective work on economic, social and cultural rights;

(c) Examination of the impact of globalization, including the methods and activities of transnational corporations and their relationship to the implementation by Governments of human rights, the human rights implications of structural adjustment and the right to development;

(d) Prevention of discrimination and the promotion and protection of the rights of minorities and peoples, including indigenous peoples;

(e) Prevention of discrimination against migrants and others non-citizens.

10. Insofar as its functions and methods of work are concerned, the Sub-Commission agreed on the following points:

(a) Improvement of cooperation with other human rights bodies. Broader and systematic consultation with other United Nations and regional human rights bodies should be ensured;

(b) Improvement in the programme of studies: selection, preparation and examination. The Sub-Commission had undertaken a reform of its programme of studies and endorsed the recommendations made by the Commission and its Bureau (E/CN.4/1999/104, recommendation 12 (d)). The subjects of studies would be chosen to meet the needs of the Commission and the treaty bodies and to explore core issues on the human rights agenda at the beginning of the new century. One type of study would examine obstacles to the implementation of human rights and ways to overcome them; a second type would identify situations or phenomena, existing or developing, with serious actual or potential implications for human rights, in order to obtain the knowledge required to propose appropriate responses. The revisions to the programme of studies were set out in the Guidelines for the application by the Sub-Commission of the rules of procedure of the functional commission of the Economic and Social Council, finalized at its fifty-first session (E/CN.4/Sub.2/1999/22, annex);

(c) Country situations. Several members of the Sub-Commission favoured the proposal of the Bureau (recommendation 12 (e) (i)) that instead of the country-specific resolutions the outcome of the annual debate of the Sub-Commission on human rights violations in all parts of the world should be a summary for submission to the Commission. One member expressed a preference for the annual debate on country situations to be abolished, but if it was retained, country-specific resolutions were preferable. Other members argued that the Sub-Commission should become more even-handed in identifying situations to be the subject of resolutions. The majority suggested that the Sub-Commission should continue to apply its expertise to country situations not under consideration at the Commission on Human Rights by adopting country-specific or thematic resolutions, decisions or statements by the Chair. The Sub-Commission should use such authority with restraint, however. In that context it should seek dialogue and cooperation with Governments, giving preference to the prevention of human rights violations, and ensure objectivity in the choice of situations addressed;

(d) Resolutions and decisions under other agenda items. The Sub-Commission assumed that the recommendation by the Bureau to avoid resolutions related only to the agenda item on violations in any country, and was not intended to recommend the abolition of resolutions and decisions under other agenda items;

(e) 1503 procedure. The Sub-Commission was of the opinion that the 1503 procedure should be maintained in its current four-stage form, but that there was room for improvement. The Sub-Commission agreed with the views put forward by the Working Group on Communications, as contained in annex I to document E/CN.4/Sub.2/1999/47;

(f) Working groups. The Sub-Commission endorsed recommendation 12 (e) (ii) that the inter-sessional Working Group on Minorities should continue and that the Working Group on Indigenous Populations should continue until such time as the permanent forum for indigenous people within the United Nations system had been established. The Sub-Commission did not, however, endorse the proposal that the Working Group on Contemporary Forms of Slavery be terminated. That would eliminate a useful forum for non-governmental organizations committed to the prevention or abolition of some human rights violations of considerable contemporary significance and seriousness.

11. Many members of the Sub-Commission were ready to accept the recommendations of the Bureau of the Commission that:

(a) The term of members should be four years, renewable only once;

(b) Members shall not serve concurrently in posts in the executive branch of their Governments. However, questions were raised in this regard, such as whether a professor at a national university would be eligible to serve on the Sub-Commission and if a member of the Sub-Commission would be obliged to resign if he or she were appointed to such a post.

12. On the other hand, however, the overwhelming majority of the Sub-Commission were firmly convinced that:

(a) The membership of the Sub-Commission should not be decreased from the current 26 to 16;

(b) The members of the Sub-Commission should not be appointed by the Chairperson of the Commission but should be elected by the Commission as heretofore;

(c) The duration of the annual session of the Sub-Commission should not be shortened from the current four weeks to two;

(d) The current system of "alternates" should be maintained.

13. With regard to observation 27 made by the Bureau of the Commission that "the Sub-Commission is by far the most expensive of the Commission's subsidiary mechanisms, the cost of its annual session being higher than that of the Commission itself", the Sub-Commission referred to a table annexed to document E/CN.4/Sub.2/1999/47 (annex II) setting out a comparison of the total annual costs (in United States dollars) of the sessions of the Commission and the Sub-Commission, as provided by the Office of the High Commissioner for Human Rights. According to this document, the total comparative meeting costs are as follows:

Account description	1998	1999	Total
Commission on Human Rights	6 034 159	6 067 668	12 101 827
Sub-Commission	2 164 922	2 216 457	4 381 379

III. STUDIES, REPORTS AND NEW SUBJECTS

14. The Sub-Commission welcomed the final report of the study on treaties, agreements and other constructive arrangements between States and indigenous populations, submitted by Mr. Miguel Alfonso Martínez (E/CN.4/Sub.2/1999/20).

15. Five studies and reports entrusted to special rapporteurs in accordance with existing legislative authority are under way on the following subjects: (a) the concept and practice of affirmative action; (b) traditional practices affecting the health of women and the girl child; (c) updated report on systematic rape, sexual slavery and slavery-like practices during armed conflict, including internal armed conflict; (d) indigenous peoples and their relationship to land; (e) human rights and terrorism.

16. Furthermore, the Sub-Commission entrusted a number of experts with the task of preparing and/or updating the following working papers: (a) realization of the right to education, including education in human rights; (b) promotion of the realization of the right to drinking water supply and sanitation services; (c) review of international standards on slavery; (d) human rights problems and protection of the Roma; (e) observance of human rights by States not parties to the United Nations human rights conventions; (f) globalization and its impact on the full enjoyment of all human rights; (g) adverse consequences of economic sanctions on human rights; (h) implementation of the Guidelines on HIV/AIDS. As in the past, all working documents will be prepared by experts without financial implications.

17. The Sub-Commission recommended to the Commission that the following studies and reports be entrusted to new special rapporteurs: (a) the rights of non-citizens (special rapporteur to be appointed); (b) globalization and its impact on the full enjoyment of all human rights (Mr. Joseph Oloka-Onyango and Ms. Deepika Udagama); (c) reservations to human rights treaties (Ms. Françoise Hampson).

IV. EVALUATION OF THE WORK OF THE SUB-COMMISSION AT ITS FIFTY-FIRST SESSION

18. Four inter-sessional working groups met prior to the fifty-first session of the Sub-Commission: the Working Group on Communications, the Working Group on Indigenous Populations, the Working Group on Minorities and the Working Group on Contemporary Forms of Slavery. The Sub-Commission also established two sessional working groups: the working group on the working methods and activities of transnational corporations and the working group on the methods of work of the Sub-Commission. Furthermore, the Sub-Commission decided not to establish a sessional working group on the administration of justice at its fifty-first session and to consider the matter at its next session. It is worth underlining that further consideration should be given to improving the substantive relationship between the Sub-Commission and its working groups. Continued support and encouragement should be given to these working groups in the accomplishment of their tasks.

19. At the fifty-first session the Sub-Commission held 27 public meetings, in response to the Commission's request not to hold more than 30 public meetings, and 7 closed meetings. Approximately 1,200 persons, including some 800 persons representing non-governmental organizations, attended the session. A total of 200 documents were issued, amounting to 2,699 pages.

20. The Sub-Commission adopted 30 resolutions and 17 decisions. It agreed on six Chairperson's statements, most of which were made under the agenda item dealing with the question of the violation of human rights and fundamental freedoms in all countries. Furthermore, in view of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance to be held in 2001, the Sub-Commission made a number of proposals and recommendations to the Commission and to the Preparatory Committee for the World Conference. With reference to economic, social and cultural rights, the Sub-Commission adopted decisions and resolutions relating to eight topics, inter alia globalization and its impact on the full enjoyment of all human rights, housing and property restitution in the context of the return of refugees and internally displaced persons, the convening of a social forum, and the right to adequate food and to be free from hunger. On civil and political rights, the Sub-Commission took action on a number of issues, such as violations of the rights of human rights defenders in all countries, the death penalty, in particular in relation to juvenile offenders, the prevention of discrimination against and the protection of minorities, and the draft international convention on the protection of all persons from enforced disappearance.

21. Furthermore, it is encouraging to note the growing awareness of the issue of human rights with regard to women, in particular with regard to traditional practices affecting the health of women and the girl child. In this connection, the Sub-Commission adopted three resolutions relating to: (a) traditional practices affecting the health of women and the girl child (resolution 1999/13); (b) the situation of women and girls in Afghanistan (resolution 1999/14), and (c) women and the right to development (resolution 1999/15). The question of systematic rape, sexual slavery and slavery-like practices was also discussed extensively by the Sub-Commission.

22. The Sub-Commission at its fifty-first session has embarked upon a project of reforms by responding in a careful way to the requests made by the Commission on Human Rights for the rationalization of its work. It has spared no effort to look into ways and means in order to ensure the effectiveness of its methods of work and, in this respect, made a number of comments and proposals to the Commission. It is hoped that positive feedback would ensue. The coherence and overall effectiveness of the Commission and the Sub-Commission would be determined by their respective capacity to confront and respond to the new challenges facing us in the new millennium. As always, the Sub-Commission is ready to fully play its role as part of the United Nations human rights mechanisms to achieve all of its purposes in the field of human rights.